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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,157	09/22/2003	Rance W. Searle	T9539.B	1657
20450	7590	05/11/2004	EXAMINER	
ALAN J. HOWARTH P.O. BOX 1909 SANDY, UT 84091-1909			VALENTI, ANDREA M	
		ART UNIT	PAPER NUMBER	
		3643		

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/669,157	SEARLE ET AL. <i>SL</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Andrea M. Valenti	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 September 2003.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-12 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 986,395 to King in view of U.S. Patent No. 5,741,339 to DuMars and German Patent DE 3307428 A1 to Juergens.

Regarding Claims 1, 4, 7-9, and 12, King teaches a planter and method for high-density growth plants with a first bottom; a first front wall (King Fig. 2 element a), a first back wall (King Fig. 2 element a), and first and second side walls (King Fig. 2 element b) disposed on the first bottom such that said first bottom, the first front wall, first back wall, and first and second side walls define a first cavity for receiving a plant growth medium for supporting roots of the plants (King Fig. 3); a first structure (King Fig. 4, 5, 6, 7, 8, element d) disposed on the first side wall configured for permitting attachment of a second bottom, a second front wall, and a second back wall thereto, and a second structure disposed on the second side wall configured for permitting attachment of third bottom, a third front wall, and a third back wall thereto (King Fig. 1).

King is silent on the first bottom comprising at least one drain hole for permitting liquids to drain therethrough. However, DuMars teaches a planter with drain holes (DuMars #Fig. 4 #28-30). It would have been obvious to one of ordinary skill in the art

to modify the teachings of King with the teachings of DuMars at the time of the invention since it is old and notoriously well-known in the art provide hole in a receptacle container to prevent damage to the root system from over watering especially if the receptacle is outdoors and exposed to natural rain.

King as modified is silent on the first front wall, first back wall, third back wall, second back wall, and first and second side walls comprise a plurality of holes configured for permitting stems of the plants to extend therethrough. However, Juergens teaches a plant receptacle with a plurality of holes around the entire side perimeter of the container (Juergens Fig. 3 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings of King with the teachings of Juergens at the time of the invention for the decorative appeal taught by Juergens (Juergens English Abstract).

Regarding Claims 2 and 5, King as modified teaches the plurality of holes is configured in at least two rows (Juergens Fig. 2 #4).

Regarding Claims 3 and 6, King as modified teaches the plurality of holes is configured in three rows (Juergens Fig. 2 #4).

Regarding Claim 12, King as modified is silent on the front wall comprising three rows of eight holes each and each of the side walls comprising three rows of three holes each. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an aesthetic design choice involving the duplication of a part for a multiple effect performing the

same intended function but to enhance the aesthetic appeal with more or less plant coverage as desired and does not present a patentably distinct limitation.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,457,926; U.S. Patent No. 5,601,384; U.S. Patent No. 3,726,042; U.S. Patent No. 4,151,680; U.S. Patent No. 5,511,342; and German Patent DE 3220531.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Andrea M. Valenti*  
Andrea M. Valenti  
Examiner  
Art Unit 3643

5 May 2004

*Peter M. Poon*  
Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600